

Message Text

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ORIGIN L-03

INFO OCT-01 ARA-14 ISO-00 SCS-06 CA-01 /025 R

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-----040144 250108Z /61

R 242023Z JUL 78
FM SECSTATE WASHDC
TO AMEMBASSY BOGOTA

UNCLAS STATE 186462

E.O. 11652: N/A

TAGS: PFOR

SUBJECT: DRAFT U.S.-COLUMBIA CONSULAR CONVENTION

REF: BOGOTA 6404

1. FOLLOWING ARE DEPT.'S RESPONSES TO EMB.'S COMMENTS ON
DRAFT TREATY.

(A) ARTICLE 1(D) ("CONSULAR OFFICER"): THIS DEFINITION IS INTENDED TO INCLUDE CONSULAR AGENTS. RESPECTING PROBLEM RAISED BY ARTICLE 5'S PROHIBITION AGAINST PERMANENT RESIDENTS SERVING AS CONSULAR OFFICERS, DEPT. SUGGESTS FOLLOWING MODIFICATION: "A CONSULAR OFFICER SHALL BE A NATIONAL OF THE SENDING STATE AND SHALL NOT BE A NATIONAL OF THE RECEIVING STATE. A CONSULAR OFFICER SHALL NOT BE A PERMANENT RESIDENT OF THE RECEIVING STATE EXCEPT WITH THE EXPRESS CONSENT OF THAT STATE GIVEN IN ADVANCE."

(B) ARTICLE 7, PARAGRAPH 2 (CONSULAR DEPARTMENTS):
(I) LOCAL EMPLOYEES ARE INCLUDED WITHIN THE DEFINITION OF "CONSULAR EMPLOYEE" (ART. 1(E)). (II) TO AVOID AMBIGUITY
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CONCERNING PRIVILEGES AND IMMUNITIES OF A CONSULAR DEPARTMENT OF AN EMBASSY, INCLUDING MATTER REFERRED TO RELATING TO APPLICATION OF ARTICLE 18 ("IMMUNITY FROM GIVING TESTIMONY"), DEPT. SUGGESTS ADDITION OF FOLLOWING NEW PARAGRAPH (3) TO ARTICLE 7: "THE PROVISIONS OF THIS CONVENTION

RELATING TO CONSULAR FUNCTIONS, RIGHTS, FACILITIES,

PRIVILEGES AND IMMUNITIES SHALL APPLY IN THE CASE OF
CONSULAR FUNCTIONS BEING PERFORMED BY A DIPLOMATIC MISSION."

(C) ARTICLE 10 (TEMPORARY EXERCISE OF THE FUNCTIONS
OF HEAD OF A CONSULATE"); DEPT. DOES NOT READ THIS LAN-
GUAGE AS REQUIRING FORMAL NOTIFICATION TO MFA OF TEMPORARY
ABSENCE OF HEAD OF POST FROM CONSULAR DISTRICT. POSITION
WOULD NOT BE CONSIDERED "VACANT" UNLESS POST LACKED PROPERLY
RECOGNIZED CONSULAR OFFICER WHO COULD ACT IN ABSENCE OF

HEAD OF POST.

(D) ARTICLE 17 ("IMMUNITIES OF MEMBERS OF A CONSULATE");
DEPT. OPPOSES EXTENSION OF PRIVILEGES AND IMMUNITIES TO
NATIONALS OF RECEIVING STATE, ALBEIT "DUAL NATIONALS."
WHAT IS PRACTICAL DIFFICULTY IN THIS REGARD? DEPT. WISHES

TO AVOID AT ALL COSTS POSSIBILITY OF HAVING TO ACCORD P&I
TO U.S. CITIZENS OR PERMANENT RESIDENTS.

(E) ARTICLE 37 ("COMMUNICATIONS WITH DETAINED SENDING
STATE NATIONALS"): (I) SUGGEST IN PARA 4 ADDING A COMMA
AFTER "CUSTODY." DELETING "OR" AND AFTER "DETENTION"
(FOLLOWING NEW COMMA) "OR IS BEING HELD INCOMMUNICADO IN
THE CONSULAR DISTRICT..." (II) FOR PARA 5, SUGGEST FOLLOW-
ING SUBSTITUTE WORDING: "IN THE CASE OF FORMAL PRO-
CEEDINGS AGAINST A NATIONAL OF THE SENDING STATE IN THE
RECEIVING STATE, THE APPROPRIATE AUTHORITY SHALL...PERMIT
THE CONSULAR OFFICER TO BE PRESENT DURING THE INVESTIGATION
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STAGES AND DURING THE TRIAL OF SUCH NATIONAL AND DURING ANY
SUBSEQUENT PROCEEDINGS." (III) DEPT. NOT IN FAVOR OF
ADDING LANGUAGE FROM 1850 TREATY FOR TWO REASONS: (1) IT
DOESN'T DEAL SPECIFICALLY ENOUGH WITH SUBJECT MATTER OF
ART. 37 AND (2) COULD BE READ IN THIS CONTEXT AS RE-
QUIRING CONSULAR OFFICER TO SERVE AS LEGAL REPRESENTATIVE.
(IV) RE PARA 8, EMB'S UNDERSTANDING OF INTENT IS CORRECT;
GOC ACCEPTANCE SHOULD BE DEALT WITH DURING NEGOTIATION
STAGE.

(F) ART. 41 ("FUNCTIONS RELATING TO AIRCRAFT"); DEPT.
WOULD APPRECIATE ADDITIONAL DETAIL ON NEED FOR SUPPLEMEN-
TARY PROVISION IN ART. 41 RELATING TO PROTECTION OF PRIVATE
AIRCRAFT INTENDED TO BE SEIZED FOR ILLEGAL ACTIVITIES. IF
CITED TREATY IS 1937 U.S.-MEXICO CONVENTION ON RECOVERY OF
STOLEN OR EMBEZZLED MOTOR VEHICLES, TRAILERS AND AIR-
PLANES, PLEASE ADVISE WHICH PARTICULAR PROVISIONS EMB WOULD

FIND DESIRABLE FOR INCLUSION IN CONSULAR TREATY.

2. EMB. REQUESTED TO ADVISE DEPT. ON ANTICIPATED PRO-
GRESS OF NEGOTIATIONS. VANCE

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: n/a
Control Number: n/a
Copy: SINGLE
Draft Date: 24 jul 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 jan 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978STATE186462
Document Source: CORE
Document Unique ID: 00
Drafter: HFSHAMWELL, JR.
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D780304-0137
Format: TEL
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t19780726/aaaaawcx.tel
Line Count: 115
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: b526f96d-c288-dd11-92da-001cc4696bcc
Office: ORIGIN L
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: 78 BOGOTA 6404
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 29 mar 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: N/A
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 1905031
Secure: OPEN
Status: NATIVE
Subject: DRAFT U.S.-COLUMBIA CONSULAR CONVENTION
TAGS: PFOR, CGEN, CO
To: BOGOTA
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/b526f96d-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014